

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

THE MODERN SPORTSMAN, LLC,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

No. 19-449 C

COMPLAINT

NATURE OF THE CLAIM

1. Plaintiff brings its claim for a taking of its property without just compensation, by means of the reversal of the Bureau of Alcohol, Tobacco, Firearms, and Explosives' determination that bump-fire stocks, slide-fire devices, and devices with certain similar characteristics (collectively referred to as "bump-stocks") are a firearm part and, thus, not regulated as a firearm under the Gun Control Act of 1968 ("GCA") or the National Firearms Act of 1934 ("NFA").

2. Specifically, the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") published a Notice of Proposed Rulemaking ("NPR") in the Federal Register on March 29, 2018, 83 FR 13422. In the NPR, the ATF proposed an amendment to its regulations that would reverse its previous determinations that bump-stocks are a firearm part and not subject to federal regulation.

3. The ATF's NPR was an initial step to substantively, through fiat regulation, redefine bump-stocks as "machineguns" under the NFA and GCA.

4. The NPR, 83 FR 13422, was an abrupt reversal of clear ATF guidance that was followed by hundreds-of-thousands of law-abiding citizens and retailers who legally purchased bump-stocks as an accessory over more than an eight-year period.

5. More than ten previous classification decisions from the ATF have classified bump-stocks as a firearm part or accessory, which hundreds-of-thousands of citizens relied on when purchasing these devices.

6. Because the ATF has long classified bump-stocks as mere firearm accessories, owners of devices classified as firearm accessories had an investment-backed expectation in their bump-stocks as firearm parts.

7. On December 26, 2018, the ATF published its final rule in the federal register, 83 FR 66514, amending 27 CFR parts 447, 478, and 479, retroactively redefining bump-fire stocks as “machineguns” under the NFA and GCA.

8. Moreover, the final rule incredibly requires that previously lawful owners destroy or surrender the device within 90-days without offering compensation. On March 20, 2019, Plaintiff destroyed the 1,479 bump-fire stocks in its possession in accordance with the final rule.

9. The final rule’s unprecedented requirement that bump-stocks be surrendered or destroyed within a 90-day period, with no opportunity for registration, effected a taking under the 5th Amendment of the United States Constitution.

PARTIES

10. Plaintiff, The Modern Sportsman, LLC, is a corporation duly organized and existing under the laws of the state of Minnesota, with its principal place of business at 3541 County Road 42 West, Burnsville, Minnesota 55306. The Modern Sportsman, LLC, is a registered FFL firearms dealer. It is also a retailer of firearms, optics, ammunition, and firearm

parts and accessories. The Modern Sportsman, LLC, also regularly rents firearms at its range, including fully automatic weapons, to enthusiasts.

11. Prior to the filing of this complaint, Plaintiff had a property interest in 1,479 bump-stock devices. As detailed herein, Plaintiff suffered a taking as a result of the ATF's amendment of 27 CFR parts 447.11, 478.11, and 479.11, requiring it to destroy or surrender its bump-fire devices.

JURISDICTION AND VENUE

12. This Complaint states causes of action for taking of property without just compensation in violation of the Fifth Amendment to the United States Constitution. The Court has jurisdiction over this action under the Tucker Act, 28 U.S.C. § 1491(a).

13. Venue is proper in the United States Court of Federal Claims pursuant to 28 U.S.C. § 1491(a).

FACTUAL BACKGROUND

14. The Attorney General is responsible for enforcing the GCA, as amended, and the NFA, as amended. This includes the authority to promulgate regulations necessary to enforce the provisions of the GCA and NFA.

15. The Attorney General has delegated the responsibility for administering and enforcing the GCA and NFA to the Director of the ATF, subject to the direction of the Attorney General and the Deputy Attorney General.

16. The Department and ATF have promulgated regulations implementing both the GCA and the NFA.

17. As the primary authority for administering and enforcing the GCA and NFA, manufactures, retailers, and the public alike have relied on the ATF for classification decisions on new bump-stock-type devices.

18. In 2006, the ATF concluded that certain spring-loaded devices were classified as machineguns under the GCA and NFA.

19. Specifically, the ATF concluded that certain devices attached to semi-automatic firearms that use an internal spring to harness the force of the recoil so that the firearm shoots more than one shot with a single pull of the trigger are machineguns.

20. One such bump-stock-type device that relied on internal springs and was classified as a machinegun was the Akins Accelerator.

21. After reclassification, the ATF advised individuals who had purchased the Akins Accelerator that they had the option of removing the internal spring, thereby placing the device outside the classification of machinegun and allowing the purchaser/possessor to *retain the device* in lieu of *destroying or surrendering the device*.

22. Between 2008 and 2017 the ATF also issued many classification decisions concluding that certain other bump-stock-type devices, that did not rely on springs, were not machineguns.

23. The ATF indicated that semiautomatic firearms modified with these bump-stock-type devices did not fire “automatically,” and were thus not “machineguns,” because the devices did not rely on internal springs or similar mechanical parts to channel recoil energy.

24. The ATF classified these bumps-stock devices as firearm accessories which are not subject to regulation.

COUNT I

(FIFTH AMENDMENT TAKING)

25. On December 26, 2018, the ATF amended 27 CFR parts 447.11, 478.11, and 479.11, retroactively redefining bump-fire stocks as “machineguns” under the NFA and GCA.

26. The amended regulations have destroyed all economic value and all investment-backed expectations in plaintiffs’ bump-stocks.

27. Bump-stocks that were once legally owned, and unregulated, firearm accessories by Plaintiff are now considered machineguns under the NFA and cannot be lawfully possessed, transported, donated, or devised.

28. Bump-stock devices possessed by individuals were required to be destroyed or surrendered to the ATF within 90-days of the effective date of the regulation, March 26, 2019

29. The ATF’s website explains that bump-fire devices can be surrendered to a local ATF office or destroyed.

30. The website also explains how to properly destroy a bump-stock, see Exhibit 1.

31. Indeed, the final rule states “any method of destruction must render the device so that it is not readily restorable to a firing condition or is otherwise reduced to scrap.”

32. In the event of destruction, the final rule also states that after the stock is reduced to scrap, an owner must “throw the pieces away.”

33. Plaintiff destroyed and discarded the resulting scrap from 1,479 bump-fire stocks pursuant to the final rule.

34. A federal law or regulation that requires previously lawful owners of property to destroy or surrender said property, without just compensation, is unprecedented in the history of the United States.

35. Unlike individual states, the federal government does not have a plenary police power.

36. The amended regulation effectively took plaintiffs property without just compensation.

37. The ATF took Plaintiff's property for a public purpose.

38. The ATF's regulation has prohibited private uses.

39. The ATF's actions are attributable to the United States.

40. The United States government has not provided Plaintiff with just compensation for the taking of Plaintiff's property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, prays for relief pursuant to each cause of action set forth in this Complaint as follows:

- A. For an order finding that Defendant took Plaintiff's property without just compensation in violation of the Fifth Amendment of the United States Constitution;
- B. For Judgment entered against the Defendants and in favor of Plaintiff for compensation for the property right taken from them, together with the costs of suit, including reasonable attorneys' fees and interest;
- C. That Plaintiff be awarded just compensation for their deprivation and losses;
- D. That Plaintiff have such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

Dated: March 26, 2019

Respectfully Submitted,



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In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

19-449 C

Names: _____

Location of Plaintiff(s)/Petitioner(s) (city/state): _____

(If this is a multi-plaintiff case, pursuant to RCFC 20(a), please use a separate sheet to list additional plaintiffs.)

Name of the attorney of record (See RCFC 83.1(c)): _____

Firm Name: _____

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box: _____

Street Address: _____

City-State-ZIP: _____

Telephone & Facsimile Numbers: _____

E-mail Address: _____

Is the attorney of record admitted to the Court of Federal Claims Bar? ☐ Yes ☐ No

Nature of Suit Code: _____

Select only one (three digit) nature-of-suit code from the attached sheet.

Agency Identification Code: _____

Number of Claims Involved: _____

Amount Claimed: \$ _____
Use estimate if specific amount is not pleaded.

Bid Protest Case (required for NOS 138 and 140):

Indicate approximate dollar amount of procurement at issue: \$ _____

Is plaintiff a small business? ☐ Yes ☐ No

Was this action preceded by the filing of a protest before the GAO? ☐ Yes ☐ No

If yes, was a decision on the merits rendered? ☐ Yes ☐ No

Income Tax (Partnership) Case:

Identify partnership or partnership group: _____

Takings Case:

Specify Location of Property (city/state): _____

Vaccine Case:

Date of Vaccination: _____

Related Case:

Is this case directly related to any pending or previously filed case(s) in the United States Court of Federal Claims? ☐ Yes ☐ No
If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.

Nature-of-Suit Codes for General Jurisdiction Cases

100 Contract - Construction - (CDA)	206 Tax - Excise	348 Military Pay - Reinstatement
102 Contract - Fail to Award - (CDA)	208 Tax - Gift	350 Military Pay - Relocation Expenses
104 Contract - Lease - (CDA)	210 Tax - Income, Corporate	352 Military Pay - Retirement
106 Contract - Maintenance - (CDA)	212 Tax - Income, Individual	354 Military Pay - SBP
108 Contract - Renovation - (CDA)	213 Tax - Income, Individual (Partnership)	356 Military Pay - Other
110 Contract - Repair - (CDA)	214 Tax - Informer's Fees	
112 Contract - Sale - (CDA)	216 Tax - Preparer's Penalty	500 Carrier - transportation
114 Contract - Service - (CDA)	218 Tax - Railroad	502 Copyright
116 Contract - Supply - (CDA)	Retirement/Unemployment Tax Act	504 Native American
118 Contract - Other - (CDA)	220 Tax - TEFRA Partnership - 28:1508	506 Oil Spill Clean Up
	222 Tax - Windfall Profit	507 Taking - Town Bluff Dam
120 Contract - Bailment	Overpayment - Interest	508 Patent
122 Contract - Bid Preparation Costs	224 Tax - 100% Penalty - 26:6672 -	509 Taking - Addicks & Barker Reservoirs
124 Contract - Medicare Act	Withholding	510 Taking - Personalty
125 Contract - Affordable Care Act	226 Tax - Other	512 Taking - Realty
126 Contract - Realty Sale		513 Taking - Rails to Trails
128 Contract - Subsidy	300 Civilian Pay - Back Pay	514 Taking - Other
130 Contract - Surety	302 Civilian Pay - COLA	515 Unjust Conviction and Imprisonment
132 Contract - Timber Sale	303 Civilian Pay - Disability Annuity	516 Miscellaneous - Damages
134 Contract - Other	304 Civilian Pay - FLSA	518 Miscellaneous - Lease
	306 Civilian Pay - Overtime Compensation	520 Miscellaneous - Mineral Leasing Act
136 Contract - Other - Wunderlich	308 Civilian Pay - Relocation Expenses	522 Miscellaneous - Oyster Growers
	310 Civilian Pay - Suggestion Award	Damages
138 Contract - Protest (Pre Award)	312 Civilian Pay - Other	524 Miscellaneous - Safety Off. Ben. Act
140 Contract - Protest (Post Award)		526 Miscellaneous - Royalty/Penalty Gas
	340 Military Pay - Back Pay	Production
200 Tax - Allowance of Interest	342 Military Pay - CHAMPUS	528 Miscellaneous - Other
202 Tax - Declaratory Judgment - 28:1507	344 Military Pay - Correct records	535 Informer's Reward
204 Tax - Estate	346 Military Pay - Correct/Reinstate	536 Spent Nuclear Fuel

Nature-of-Suit Codes for Vaccine Cases

449 Injury - Hepatitis A	485 Injury - Hemophilus Influenzae	477 Death - Pertussis
453 Injury - Pneumococcal Conjugate	486 Injury - Varicella	478 Death - Polio - inactive
456 Injury - DPT & Polio	490 Injury - Rotavirus	479 Death - Polio - other
457 Injury - D/T	492 Injury - Thimerosal	480 Death - Rubella
458 Injury - DTP/DPT	494 Injury - Trivalent Influenzae	481 Death - Tetanus & Diphtheria
459 Injury - Measles	496 Injury - Meningococcal	482 Death - Tetanus & Tox.
460 Injury - M/M/R	498 Injury - Human Papillomavirus	483 Death - Other
461 Injury - Measles/Rubella		487 Death - Hepatitis B
462 Injury - Mumps	452 Death - Hepatitis A	488 Death - Hemophilus Influenzae
463 Injury - Pertussis	454 Death - Pneumococcal Conjugate	489 Death - Varicella
464 Injury - Polio - inactive	470 Death - DPT & Polio	491 Death - Rotavirus
465 Injury - Polio - other	471 Death - D/T	493 Death - Thimerosal
466 Injury - Rubella	472 Death - DTP/DPT	495 Death - Trivalent Influenzae
467 Injury - Tetanus & Diphtheria	473 Death - Measles	497 Death - Meningococcal
468 Injury - Tetanus & Tox.	474 Death - M/M/R	499 Death - Human Papillomavirus
469 Injury - Other	475 Death - Measles/Rubella	
484 Injury - Hepatitis B	476 Death - Mumps	

AGENCY CODES

AGR	Agriculture	TRN	Department of Transportation
AF	Air Force	TRE	Department of Treasury
ARM	Army	VA	Department of Veterans Affairs
AEC	Atomic Energy Commission	VAR	Various Agencies
COM	Department of Commerce	O	Other
DOD	Department of Defense		
DOE	Department of Energy		
ED	Department of Education		
EPA	Environmental Protection Agency		
GPO	Government Printing Office		
GSA	General Services Administration		
HHS	Health and Human Services		
HLS	Homeland Security		
HUD	Housing and Urban Development		
DOI	Department of the Interior		
ICC	Interstate Commerce Commission		
DOJ	Department of Justice		
LAB	Department of Labor		
MC	Marine Corps		
NAS	National Aeronautical Space Agency		
NAV	Navy		
NRC	Nuclear Regulatory Commission		
PS	Postal Service		
STA	State Department		
SBA	Small Business Administration		

EXHIBIT 1



Bump Stock Destruction Instructions

- For destruction, regardless of manufacturer or model, a Bump Stock must be made incapable of being readily restored to its intended function by, e.g., crushing, melting or shredding the Bump Stock.
- Bump stocks may also be destroyed by cutting, so long as the Bump Stock is completely severed in the areas constituting critical design features, denoted by the red lines in the specific model of Bump Stock destruction diagrams that follow.
- The Bump Stock must be completely severed in each area indicated by the red line.
- Destroying a Bump Stock using any other method may be legally insufficient, such that continued possession of the device may violate 18 U.S.C. 922(o).

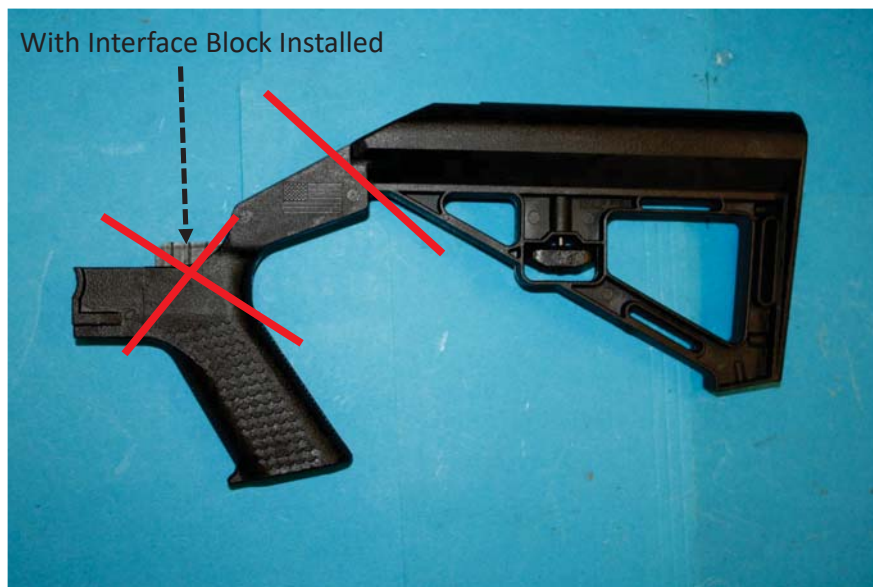


Slide Fire Solutions Bump Stock





Slide Fire Solutions Bump-Stock





Bump Fire Systems AR Bump Fire Stock



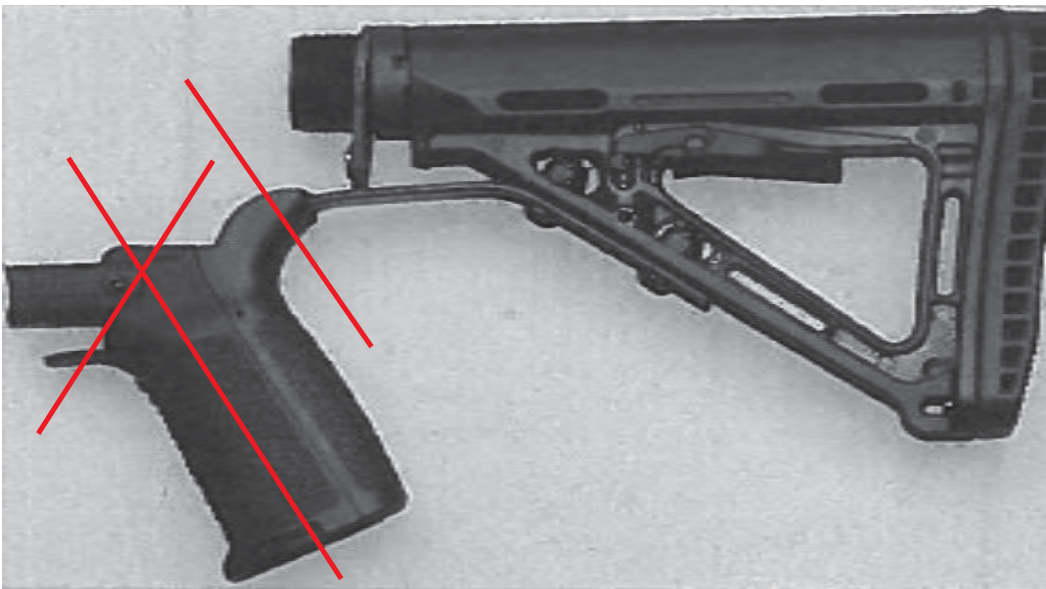


Bump Fire Systems AK Bump Fire Stock



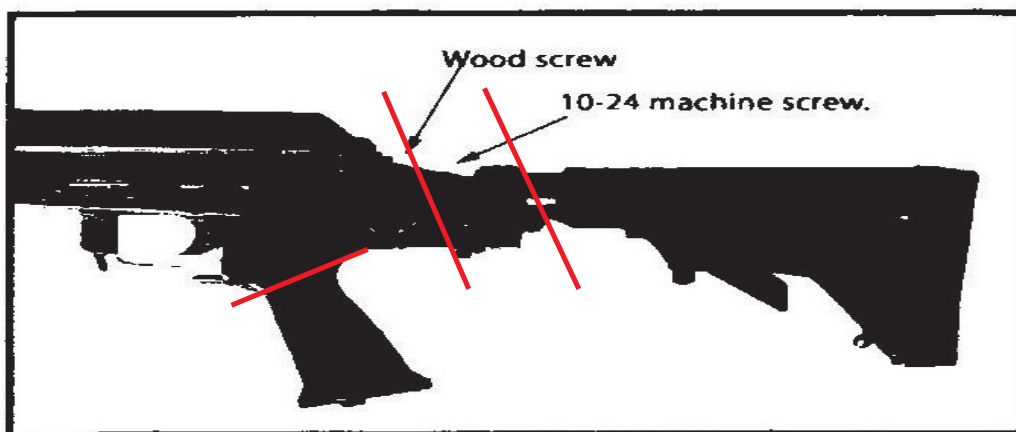


Michael Wolff Bump Stock IQ #304609





Phoenix Technologies Bump Stock IQ#76598





Vincent Troncoso Bump Fire Device IQ#302683





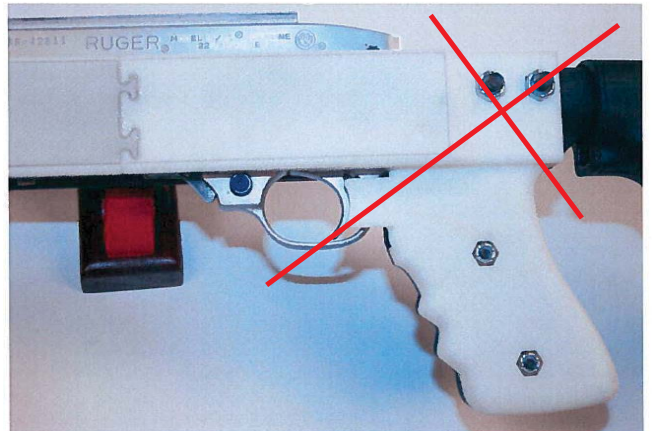
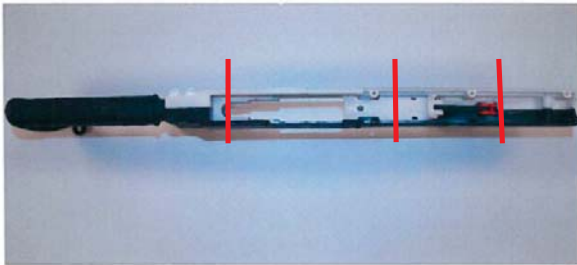
Michael Smith Bump Stock IQ#76715





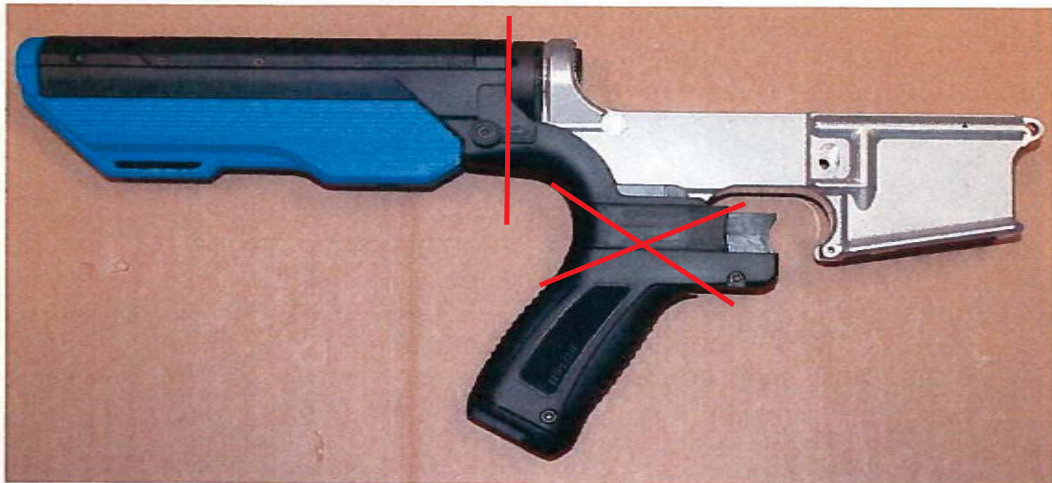
- 2 -

Paul Ruble 10/22 Bump Fire Stock IQ#303826





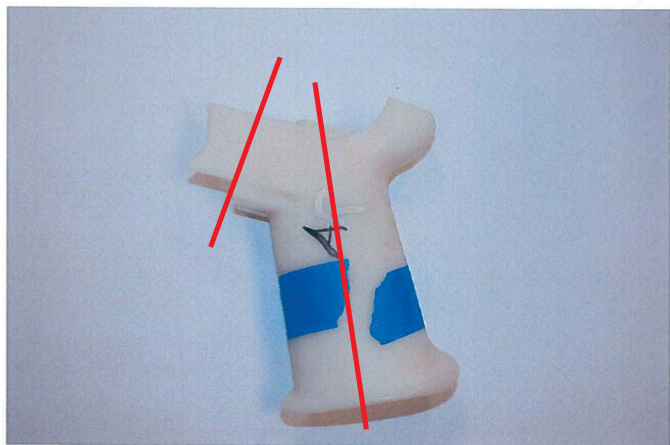
Slide Fire Solutions, AR Pistol Bump Fire Device IQ#304071



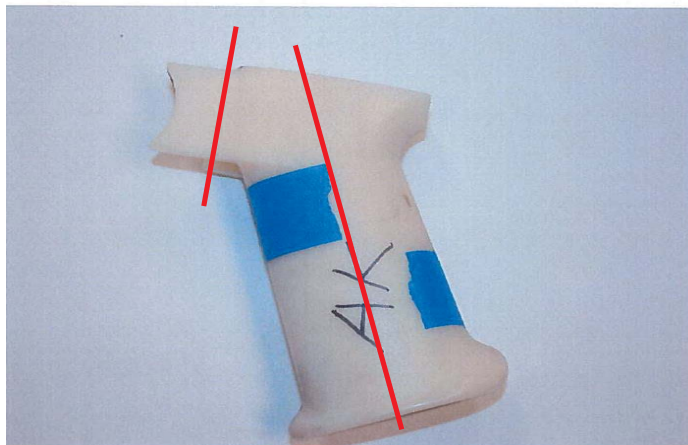


JT Grip Solutions, Bump Fire Grips IQ# 303318

AR-Type



AK-Type



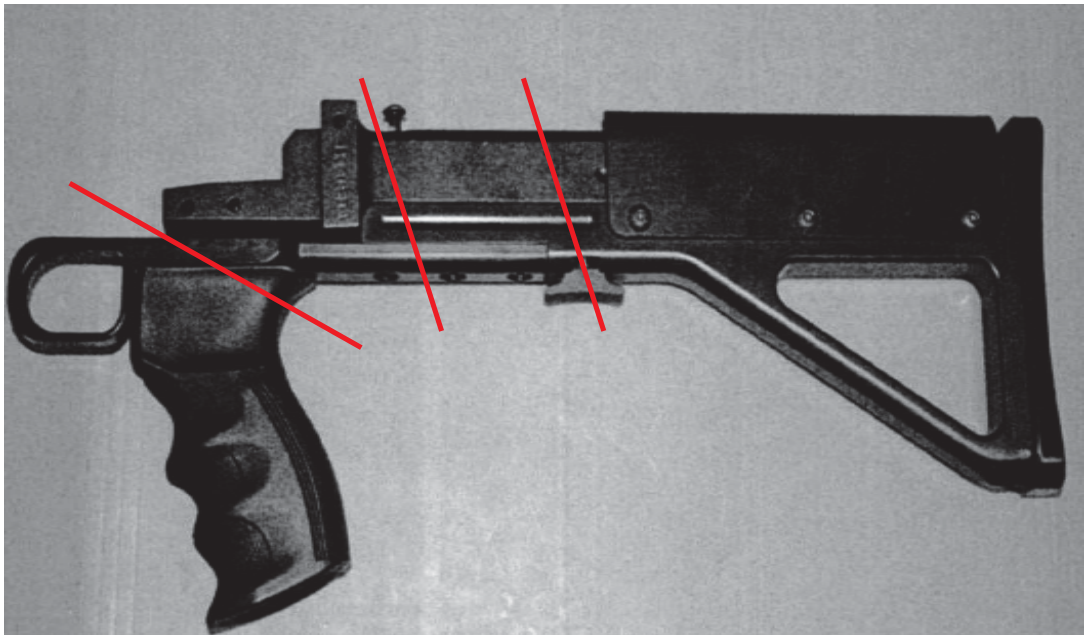


Saigatechusa/Ramlake, LLC, AK Bump Stock Device IQ#76600



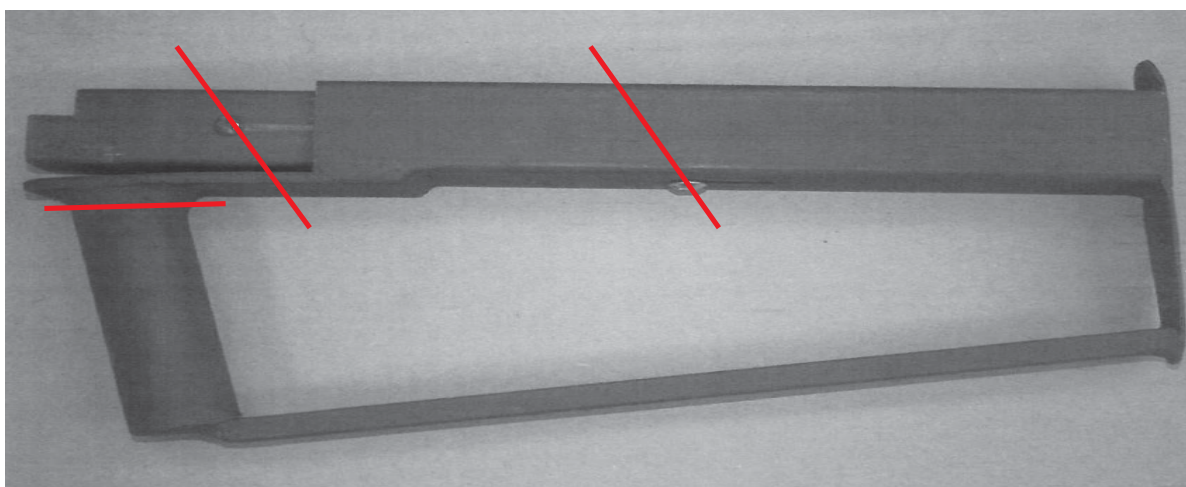


FosTech Outdoors Bumpski AK Bump Stock IQ#77918





Michael Foeller AK Bump Stock IQ#72350





James Erskine Hailstorm Bump Stock IQ#78025





David Compton Bump Fire Stock IQ# 74544





Mike DeWitt Chuckbuster Bump Fire Grip IQ#303195

